

ORDINANCE NO. 3345

AN ORDINANCE AMENDING TITLE 22 OF THE SAN LUIS OBISPO COUNTY CODE, THE LAND USE ORDINANCE, TO AMEND CHAPTER 22.52 – GRADING AND DRAINAGE ORDINANCE TO MODIFY THE PERMITTING PROCEDURES, APPLICATION CONTENT REQUIREMENTS, AND DEVELOPMENT STANDARDS FOR AGRICULTURAL PONDS, RESERVOIRS, AND BASIN

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1. The Board of Supervisors makes the following findings in support of the enactment of this ordinance:

- A. On July 15, 2016, the San Luis Obispo County Board of Supervisors ("Board of Supervisors") by four-fifths vote adopted a 45-day interim zoning/urgency ordinance, Ordinance No. 3326 ("Ordinance No. 3326"), pursuant to Government Code Sections 25123 and 65858 in response to an agricultural reservoir that was permitted through the Alternative Review Program without an adequate analysis of impacts to groundwater supplies and neighboring well levels. Ordinance No. 3326 prohibited the approval of agricultural reservoirs through the Alternative Review Program and required applications for agricultural reservoirs to include a hydrogeologic study and implement measures to minimize impacts on groundwater supplies and neighboring well levels.
- B. On August 16, 2016, prior to the expiration of Ordinance No. 3326 and in accordance with the requirements of Government Code section 65858, the Board of Supervisors held a duly noticed public hearing and by a four-fifths vote extended Ordinance No. 3326 for ten months, through May 14, 2017. The Board determined that the extension of Ordinance No. 3326 was necessary for the continued preservation of the public peace, health, safety, and welfare pursuant to the requirements of Government Code sections 25123 and 65858, and was necessary to provide additional time to prepare the studies and reports required to consider a comprehensive and permanent ordinance.
- C. Agricultural ponds and reservoirs allow landowners to pump and store large quantities of groundwater. This practice has the potential to reduce groundwater supplies for other rural residential and agricultural parcels in the region, interfere with existing wells on neighboring properties, and result in the loss of groundwater due to evaporation.
- D. This Ordinance is necessary to protect public health, safety, and welfare because it requires future applications for agricultural ponds, reservoirs, and basins to study and minimize impacts on groundwater supplies and neighboring rural residential and agricultural well levels.
- E. This Ordinance is consistent with the Land Use Element, Conservation and Open Space Element, and other adopted elements of the general plan because the changes are consistent with the general goals of the Land Use Element.
- F. This Ordinance is consistent with the guidelines for amendments to the Land Use Ordinance because the modifications will establish new development standards to minimize land use incompatibilities between residential and agricultural land uses.

SECTION 2. Section 22.52.080 (Alternative Review Program) of the County Land Use Ordinance, Title 22 of the County Code, is hereby amended to modify the types of ponds, reservoirs, and dams that are eligible for Alternative Review Program processing as follows (deleted text is shown in ~~strikethrough~~ and added text is underlined):

22.52.080(B) – Projects allowed under the alternative review program.

4. Ponds, reservoirs, and dams. The following types of projects are eligible for ARP processing:

- a. Drainage basins designed to catch run-off not related to development requiring a County permit. A drainage basin designed to catch run-off relating to development requiring a County permit shall require the issuance of a grading permit in compliance with 22.52.050. ~~Reservoirs, ponds, or basin, with a storage capacity of 15 acre-feet or more and a dam height of 6 feet or more are subject to the jurisdiction of the Division of Dam Safety of the California Department of Water Resources.~~ Any pond, reservoir, or basin which catches and retains surface drainage or riparian underflow shall have applicable water rights entitlements from the State Water Resources Control Board California State Water Resources Control Board. Ponds, reservoirs, and dams are subject to the standards in Section 22.52.150F.
- b. Ground-water filled agricultural reservoirs are not eligible for ARP processing.

SECTION 3. Section 22.52.150 (Grading and Drainage Standards) of the County Land Use Ordinance, Title 22 of the County Code, is hereby amended to establish application content requirements and development standards for agricultural ponds, reservoirs, and basins as follows (deleted text is shown in ~~strikethrough~~ and added text is underlined):

22.52.150 – Standards

F. Pond, reservoir, and dam standards.

Note: All surface stream water impoundments require approval of an application to appropriate water from the California State Water Resources Control Board, Division of Water Rights.

The following standards apply to ponds, reservoirs, basins, and dams that are not eligible for ARP processing (22.52.080) or otherwise exempt (22.52.070):

1. **Location.** The proposed site of the pond, reservoir or dam shall not be:
 - a. Identified on any U.S. Geological Survey map as a lake, marsh, or solid or broken "blue line" stream unless the project has been reviewed subject to CEQA and determined not to contain significant adverse impacts to the aquatic or riparian resources.
 - b. In a location identified on any published geologic or soils maps on soils prone to slip or slide.
2. **State Permitting. Reservoirs, ponds, or basins, with a storage capacity of 15 acre-feet or more and a dam height of 25 feet or more; or with a storage capacity of 50 acre feet or more and a dam height of 6 feet or more are subject to the jurisdiction of the Division of Dam Safety of the California Department of Water Resources. Ponds, reservoirs, and dams are subject to the standards in Section 22.52.150F.**
3. **Noticing. A notice of intent to adopt a negative declaration or mitigated negative declaration shall be mailed for agricultural ponds, reservoirs, and basins to all landowners within 1,000 feet of the project site's parcel boundaries, in addition to all other legal noticing requirements.**
4. **Required reports.** The Director, in granting a permit for construction, ~~may~~ **shall** require **the following information:**
 - a. Supporting geological and geotechnical engineering reports as deemed necessary for the safe design and construction of such facility. A report from a civil engineer certifying that

construction of the facility has been completed in conformity with the approved plans and specifications and this Chapter may be required.

- b. **A hydrogeologic analysis prepared by a certified hydrologist, including:**
- i. **A description of the agricultural use to be supported by the proposed reservoir, pond, or basin. If the proposed reservoir, pond, or basin is in support of a future agricultural use, then the application shall include a planting plan showing the location of the future crops.**
 - ii. **Identification of wells that would be used to fill the proposed agricultural reservoir, pond, or basin.**
 - iii. **Information regarding the property's use of water and proposed use of water after construction of the proposed reservoir, pond, or basin.**
 - iv. **Estimated evaporative water loss from the surface of the reservoir, pond, or basin, based on site specific conditions.**
 - v. **A well interference and draw-down analysis, which evaluates how increased pumping would affect neighboring wells. This analysis shall take into consideration site specific variables such as the number and spacing of wells on-site, pumping rates, properties of the aquifer, and the duration over which pumping has and will occur.**
5. **Peer Review. The hydrogeologic analysis required in this section shall be subject to peer review by a qualified hydrogeologist. The peer review shall be conducted by an on-staff or qualified consulting hydrogeologist.**
6. **Design Standards. Groundwater filled reservoirs, ponds, and basins shall incorporate all feasible design measures to minimize evaporative water loss. This could include using a smaller surface area and/or an evaporation barrier.**
7. **Water Offsets - Projects in an LOS III Groundwater Basin. New agricultural reservoirs, ponds, and basins that would be filled using wells overlying an LOS III Groundwater Basin shall propose measures to offset the estimated evaporative water loss at a ratio of at least 1:1. Compliance with this standard may be achieved through modification of onsite irrigated agriculture in existence at the time of Application Acceptance or through other means proposed by the applicant and approved by the Director of Planning and Building. If offsets are proposed through modification of crops, the applicant shall record a covenant and agreement prohibiting irrigation of the identified areas. The covenant shall remain in effect until the LOS for the groundwater basin is adjusted by the County Board of Supervisors to an LOS of II or lower. Projects in the Paso Robles Groundwater Basin may achieve compliance with this standard by obtaining an Offset Clearance pursuant to the Agricultural Water Offset Program for that basin.**

SECTION 4. This project is exempt from the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) ("CEQA") because:

1. Per CEQA Guidelines Section 15307 (Class 7) – The ordinance consists of regulations and restrictions that require more detailed environmental review on agricultural pond projects for the preservation and protection of groundwater resources.

2. Per CEQA Guidelines Section 15308 (Class 8) – The ordinance consists of regulations and restrictions on grading permits for agricultural ponds to minimize impacts on groundwater supplies and all of the people, species, and environs that rely on that resource.

SECTION 5. If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 6: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Upon the effective date of this ordinance, Interim Zoning/Urgency Ordinance No. 3326 shall terminate and have no further force or effect. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 21st day of March, 2017, by the following roll call vote, to wit:

AYES: Supervisors Bruce S. Gibson, Adam Hill, Lynn Compton, Debbie Arnold and Chairperson John Peschong

NOES: None

ABSENT: None

ABSTAINING: None

John Peschong
Chairman of the Board of Supervisors,
County of San Luis Obispo, State of California

ATTEST:

TOMMY GONG
County Clerk and Ex-Officio Clerk of the Board
of Supervisors County of San Luis Obispo, State of California

By: Annette Ramirez
Deputy Clerk